



OFFICIAL GAZETTE

GOVERNMENT OF GOA

Note: There is one Extraordinary issue to the Official Gazette, Series I No. 2 dated 8-4-99 namely, Extraordinary dated 8-4-99 from pages 21 to 22 regarding Notification from Department of General Administration.

GOVERNMENT OF GOA

Department of Law & Judiciary

Legal Affairs Division

Notification

10-4-98/LA

The Companies (Amendment) Ordinance, 1998 (Ordinance No. 19 of 1998) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I, dated 31st October, 1998, is hereby published for general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 4th January, 1999.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 31st October, 1998/Kartika 9, 1920 (Saka)

THE COMPANIES (AMENDMENT) ORDINANCE, 1998

No. 19 of 1998

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Companies Act, 1956:

Whereas a Bill to consolidate and amend the law relating to companies and certain other associations has been introduced

in Parliament and is pending consideration before the Department-related Standing Committee on Home Affairs;

An Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to some of the provisions of the said Bill with certain modifications by amending the Companies Act, 1956;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Companies (Amendment) Ordinance, 1998.

(2) It shall come into force at once.

2. *Amendment of section 4A.*—In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 4A, in sub-section (1), after clause (v), the following clause shall be inserted, namely:—

“(vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act.”

3. *Amendment of section 58A.*—In section 58A of the principal Act, after sub-section (10) and before the *Explanation*, the following sub-section shall be inserted, namely:—

“(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section.”

4. *Insertion of new sections 77A and 77B.*—After section 77 of the principal Act, the following sections shall be inserted, namely:—

77A. *Power of company to purchase its own securities.*—(1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as “buy-back”) from—

(i) out of its free reserves; or

(ii) out of the securities premium account; or

(iii) out of the proceeds of an earlier issue other than fresh issue of shares made specifically for buy-back purposes.

(2) No company shall purchase its own shares or other specified securities under sub-section (1) unless—

- (a) the buy-back is authorised by its articles;
- (b) a special resolution has been passed in general meeting of the company authorising the buy-back;
- (c) the buy-back does not exceed twenty five per cent of the total paid-up capital and free reserves of the company purchasing its own shares or other specified security;
- (d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back;
- (e) all the shares or other specified securities fully paid-up;
- (f) the buy-back is in accordance with the regulations made by the Securities Exchange Board of India in this behalf.

Explanation.— For the purposes of this sub-section, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

(3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

- (a) a full and complete disclosure of all material facts;
- (b) the necessity for the buy-back;
- (c) the class of security intended to be purchased under the buy-back;
- (d) the amount to be invested under the buy-back; and
- (e) the time limit for completion of buy-back.

(4) Every buy-back shall be completed within twelve months from the date of passing the special resolution under sub-section (2).

(5) The buy-back under sub-section (1) may be—

- (a) from the existing security holders on a proportionate basis; or
- (b) from the open market; or
- (c) from odd lots, that is to say, where the lot of securities in a listed public company is smaller than such market lot as may be specified by the stock exchange; or
- (d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company has passed special resolution to buy-back its own shares or other securities under this section, it shall, before making such purchases, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form prescribed, verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date

of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any:

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buys-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its securities under this section, it shall not make further issue of securities within a period of twenty-four months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buys-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

(11) If a company makes default in complying with the provisions of this section or any rules made thereunder, the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

77B. Prohibition for buy-back in certain circumstances.— No company shall purchase its own shares or other specified securities—

- (a) through any subsidiary company including its own subsidiary companies; or
- (b) through any investment company or group of investment companies; or
- (c) if a default, in repayment of deposit, redemption of debenture or preference shares or repayment of a term loans to any financial institutions or bank is subsisting.

5. Insertion of new section 79A.— After section 79 of the principal Act, the following section shall be inserted, namely:—

"79A. Issue of sweat equity shares.— (1) Notwithstanding anything contained in section 79, a company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled, namely:—

- (a) the issue of sweat equity shares is authorised by a resolution passed by the company in the general meeting;

(b) the resolution specifies the number of shares, their value and the class or classes of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has at the date of the issue elapsed since the date on which the company was entitled to commence business;

(d) the sweat equity shares are issued in accordance with the regulations made by the Securities Exchange Board of India in this behalf.

Explanation I.— For the purposes of this sub-section, the expression "a company" means the company incorporated, formed and registered under this Act and includes its subsidiary company incorporated in a country outside India.

Explanation II.— For the purposes of this sub-section, the expression "sweat equity shares" means equity shares issued at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

(2) All the limitations, restrictions and provisions relating to equity shares shall be applicable to such sweat equity shares issued under sub-section (1).

6. *Amendment of section 82.*— In section 82 of the principal Act, for the word "shares", the words "shares or debentures" shall be substituted.

7. *Insertion of new sections 109A and 109B.*— After section 109 of the principal Act, the following sections shall be inserted, namely:—

"109A. *Nomination of shares.*— (1) Every holder of shares in, or holder of debentures of, a company may, at any time nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

(2) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in or debentures of the company, the nominee shall, on the death of the shareholder or holder of debentures of the company or, as the case may be, on the death of the joint holders become entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the

nomination to appoint in the prescribed manner any person to become entitled to shares in or debentures of the company, in the event of his death, during the minority.

109B. *Transmission of shares.*— (1) Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share or debenture, as the case may be; or

(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.

(2) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased shareholder or debenture holder, as the case may be, had transferred the share or debenture, as the case may be, before his death.

(3) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, as the case may be, himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.

(4) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(5) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until the requirements of the notice have been complied with."

8. *Amendment of section 205A.*— In section 205A of the principal Act,—

(a) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of five years from the date of such transfer shall be transferred by the

company to the Fund established under sub-section (1) of section 205C but a claim to any money so transferred to such Fund may be preferred to the authority or committee appointed under sub-section (4) of that section by the person to whom the money is due and shall be dealt with as if such transfer to the Fund had not been made.”;

(b) in sub-section (6),—

(i) for the words “general revenue account of the Central Government”, the words, figures and letter “Fund established under section 205C” shall be substituted;

(ii) for the words “to such officer as the Central Government may appoint”, the words “authority or committee as the Central Government may appoint” shall be substituted;

(c) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof.”.

9. *Amendment of section 205B.*— In section 205B of the principal Act, for the words “to the general revenue account of the Central Government, may apply to the Central Government”, the words, figures, letter and brackets “to the Fund established under section 205C may apply to the authority or the committee appointed under sub-section (4) of that section” shall be substituted.

10. *Insertion of new section 205C.*— After section 205B of the principal Act, the following section shall be inserted, namely:—

205C. *Establishment of Investor Education and Protection Fund.*— (1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the “Fund”).

(2) There shall be credited to the Fund the following amounts, namely:—

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of five years from the date they became due for payment.

(3) The Fund shall be utilised for promotion of investor awareness and protection of the interest of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

11. *Insertion of new section 210A.*— After section 210 of the principal Act, the following section shall be inserted, namely:—

210A. *Constitution of National Advisory Committee on Accounting standards.*— (1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards (hereafter in this section referred to as the “Advisory Committee”) to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

(2) The Advisory Committee shall consist of the following members, namely:—

(a) a Chairperson who shall be a person of eminence well versed in accountancy, finance, business administration, business law, economics or similar discipline;

(b) one member each nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountant Act, 1959 and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980;

(c) one representative of the Central Government to be nominated by it;

(d) one representative of the Reserve Bank of India to be nominated by it;

(e) one representative of the Comptroller and Auditor-General of India to be nominated by him;

(f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university;

(g) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 or his nominee; 54 of 1963.

(h) two members to represent the chambers of commerce and industry to be nominated by the Central Government; and

(i) one representative of the Securities and Exchange Board of India to be nominated by it.

(3) The advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.

(4) The members of the Advisory Committee shall hold office for such terms as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled.

(5) The non-official members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank.

12. *Amendment of section 211.*— In section 211 of the principal Act, after sub-section (3), the following sub-sections shall be inserted, namely:—

(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards.

(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:—

- (a) the deviation from the accounting standards;
- (b) the reasons for such deviation; and
- (c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949, as may be prescribed by the Central 38 of 1949. Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A:

Provided that the standard of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the National Advisory Committee on Accounting Standards is established under sub-section (1) of section 210A.

13. *Amendment of section 227.*— In section 227 of the principal Act, in sub-section (3),—

(i) after clause (c), the following clause shall be inserted, namely:—

"(d) whether, in his opinion, the profit and loss account and balance sheet complied with the accounting standards referred to in sub-section (3C) of section 211.";

(ii) in sub-section (4), for the word and brackets and letter "and (c)", the brackets, letters and word", (c) and (d)" shall be substituted.

14. *Amendment of section 370.*— In section 370 of the principal Act, after sub-section (5), and before the explanation the following sub-section shall be inserted, namely:—

"(6) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Ordinance, 1998.".

15. *Amendment of section 372.*— In section 372 of the principal Act, after sub-section (14), the following sub-section shall be inserted, namely:—

"(15) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Ordinance, 1998.".

16. *Insertion of new section 372A.*— After section 372 of the principal Act, the following section shall be inserted, namely:—

"372A. *Intercorporate loans and investments.*— (1) No company shall, directly or indirectly,—

(a) make any loan to any body corporate;

(b) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate; and

(c) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital and free reserves, or hundred per cent. of its free reserves, whichever is more:

Provided that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting:

Provided further that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.

(2) No loan to anybody corporate shall be made at the rate of interest lower than the prevailing bank rate of interest.

(3) No loan or investment shall be made or guarantee or security given by the Board in pursuance of sub-section (1) unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting

and the prior approval of the public financial institution referred to in section 4A where any term loan is subsisting.

(4) (a) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1), namely:—

(i) the name of the body corporate;

(ii) the amount, terms and purpose of the investment or loan or security or guarantee;

(iii) the date on which the investment or loan has been made; and

(iv) the date on which the guarantee has been given or security has been provided in connection with a loan.

(b) The particulars of investment, loan, guarantee or security referred to in clause (a) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.

(5) The register referred to in sub-section (4) shall be kept at the registered office of the company concerned and—

(a) shall be open to inspection at such office; and

(b) extracts may be taken therefrom and copies thereof may be required,

by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.

(6) The Central Government may, in consultation with the Securities and Exchange Board of India may, prescribe guidelines for the purposes of this section.

(7) Nothing contained in this section shall apply to any loan made, any guarantee given or any security provided or any investment made by—

(a) a banking company, or a insurance company, or a housing finance company in the ordinary course of its business, or a company established with the sole object of financing industrial enterprises, or of providing infrastructural facilities;

(b) a company whose principle business is the acquisition of shares, stock, debentures or other securities;

(c) a private company, unless it is a subsidiary of a public company;

(8) If default is made in complying with the provisions of this section, other than sub-section (4), the company and every officer of the company who is in default shall be punishable with

imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees:

Provided that where any such loan or any loan in connection with which any such guarantee or security has been given, or provided by the company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced:

Provided further that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company.

(9) If default is made in complying with the provisions of sub-section (4), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first during which the default continues.

Explanation.— For the purposes of this section,—

(a) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company;

(b) "free reserves" means those reserves which, as per latest audited balance-sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.'

K. R. NARAYANAN,
President.

RAGHBIR SINGH,
Secy. to the Govt. of India.

Notification

10-4-99/LA-III

The Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1999 (Ordinance No. 2 of 1999) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II Section I dated 7th January, 1999 is hereby published for general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 5th February, 1999.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 7th January, 1999 /Pausa 17, 1920 (Saka)

THE PRASAR BHARATI (BROADCASTING CORPORATION OF INDIA) AMENDMENT ORDINANCE, 1999

(No. 2 of 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

Whereas the Prasar Bharati (Broadcasting Corporation of India) Amendment Bill, 1998 has been passed by the House of the people and is pending in the Council of States;

And Whereas the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, to give effect to the provisions of the said Bill and to make certain other amendments to the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 was promulgated by the President on the 29th day of August, 1998;

And Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give continued effect to the provisions of the said Ordinance;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1999.

(2) The provisions of sections 5 and 19 shall be deemed to have come into force on the 29th day of August, 1998 and remaining provisions of this Ordinance shall be deemed to have come into force on the 6th day of May, 1998.

2. *Substitution of new section for section 2.*—

For section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

2 Definitions.— In this Act, unless the context otherwise requires,—

(a) "Akashvani" means the offices, stations and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, All India Radio of the Union Ministry of Information and Broadcasting;

(b) "appointed day" means the date appointed under section 3;

(c) "broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly;

(d) "Board" means the Prasar Bharati Board;

(e) "Broadcasting Council" means the Council established under section 14;

(f) "Chairman" means the Chairman of the Corporation appointed under section 4;

(g) "Corporation" means the Prasar Bharati (Broadcasting Corporation of India) established under section 3;

(h) "Doordarshan" means the offices, kendras and other establishments, by whatever name called, which, immediately before the appointed day, formed part of or were under the Directorate-General, Doordarshan of the Union Ministry of Information and Broadcasting;

(i) "elected Member" means a Member elected under section 3;

(j) "Executive Member" means the Executive Member appointed under section 4;

(k) "kendra" means any telecasting centre with studios or transmitters or both and includes a relay station;

(l) "Member" means a Member of the Board;

(m) "Member (Finance)" means the Member (Finance) appointed under section 4;

(n) "Member (Personnel)" means the Member (Personnel) appointed under section 4;

(o) "Nominated Member" means the Member nominated by the Union Ministry of Information and Broadcasting under section 3;

(p) "Non-lapsable Fund" means the Fund created from the commercial revenues of Akashvani and Doordarshan to meet expenditure on certain schemes;

(q) "notification" means a notification published in the Official Gazette;

(r) "Part-time Member" means a Part-time Member of the Board appointed under section 4, but does not include an *ex-officio* Member, the Nominated Member or an elected Member;

(s) "prescribed" means prescribed by rules made under this Act;

(t) "Recruitment Board" means a board established under sub-section (1) of section 10;

(u) "regulations" means regulations made by the Corporation under this Act;

(v) "station" means any broadcasting station with studios or transmitters or both and includes a relay station;

(w) "Whole-time Member" means the Executive Member, Member (Finance) or Member (Personnel);

(x) "year" means the financial year.'

3. *Amendment of section 3.*— In section 3 of the principal Act, for sub-section (5) and (6), the following sub-sections shall be substituted, namely:—

"(5) The Board shall consist of—

(a) a Chairman;

(b) one Executive Member;

(c) one Member (Finance);

(d) one Member (Personnel);

(e) six Part-time Members;

(f) Director-General (Akashvani), *ex officio*;

(g) Director-General (Doordarshan), *ex officio*;

(h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by that Ministry; and

(i) two representatives of the employees of the Corporation, of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves.

(6) The Corporation may appoint such committees as may be necessary for the efficient performance, exercise and discharge of its functions, powers and duties:

Provided that all or a majority of the members of each committee shall be Members and a member of any such committee who is not a Member shall have only the right to attend meetings of the committee and take part in the proceedings thereof, but shall not have the right to vote."

4. *Amendment of section 4.*— In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The Chairman and the Part-time Members shall be persons of eminence in public life; the Executive Member shall be a person having special knowledge or practical experience in respect of such matters as administration, management, broadcasting, education, literature, culture, arts, music, dramatics, or

journalism; the Member (Finance) shall be a person having special knowledge or practical experience in respect of financial matters and the Member (Personnel) shall be a person having special knowledge or practical experience in respect of personnel management and administration."

5. *Substitution of new section for section 6.*— For section 6 of the principal Act, the following section shall be substituted, namely:—

"6. *Term of office, conditions of service, etc., of Chairman and other Members.*— (1) The Chairman shall be a Part-time Member and shall hold office for a term of six years from the date on which he enters upon his office.

(2) The Executive Member, the Member (Finance) and the Member (Personnel) shall be Whole-time Members and every such Member shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier:

Provided that any person holding office as a Whole-time Member immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, shall, in so far as his appointment is inconsistent with the provisions of this sub-section, cease to hold office on such commencement as such Whole-time Member and shall not be entitled to any compensation because of his ceasing to hold such office.

(3) The term of office of Part-time Members shall be six years, but one-third of such members shall retire on the expiration of every second year:

Provided that every Part-time Member holding office as such, immediately before the commencement of the Prasar Bharati (Broadcasting Corporation of India) Amendment Ordinance, 1998, shall, notwithstanding anything contained in this sub-section as amended by the Prasar Bharati (Broadcasting Corporation of India) Amendment Second Ordinance, 1997, retire in accordance with the provisions of sub-section (5):

Ord. 29 of
1997.

Provided further that no such Part-time Member shall be entitled to any compensation for curtailment of the term of his office under sub-section (5).

(4) The term of office of an elected Member shall be two years or till he ceases to be an employee of the Corporation, whichever is earlier.

(5) As soon as may be after the establishment of the Corporation, the President of India may, by order, make such provision as he thinks fit for curtailing the term of office of some of the Part-time Members then appointed in order that one -third of the Members holding office as such Part-time Members shall retire in every second year thereafter.

(6) Where before the expiry of the term of office of a person holding the office of Chairman, or any other Member, a vacancy arises, for any reason whatsoever, such vacancy shall be deemed

to be a casual vacancy and the person appointed or elected to fill such vacancy shall hold office for the unexpired period of the term for which his predecessor in office would have held office if such vacancy had not arisen.

(7) In the event of the occurrence of any vacancy by reason of death, resignation or otherwise in the office of—

(a) the Executive Member, senior most among the members referred to in clauses (c) and (d) of sub-section (5) of section 3, failing which senior most among the Members referred to in clauses (f) and (g) of that sub-section, shall perform the duties of the Executive Member until the date on which a new Executive Member appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office;

(b) any other Whole-time Member, the Executive Member shall perform the duties of such Whole-time Member until the date on which a new Whole-time Member appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(8) The Central Government shall, in the case of occurrence of vacancy by reason of death, resignation or otherwise of any Whole-time Member, within two weeks from the date of occurrence of such vacancy, make a reference to the committee referred to in sub-section (1) of section 4.

(9) The Whole-time Members shall be the employees of the Corporation and as such shall be entitled to such salaries and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salaries and allowances and the conditions of service shall not be varied to their disadvantage after their appointment.

(10) The Chairman and Part-time Members shall be entitled to such allowances as may be prescribed.”.

6. *Amendment of section 7.*— In section 7 of the principal Act.—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Notwithstanding anything contained in sub-section (1), the President may, by order, remove the Chairman or any Whole-time Member from his office if such Chairman or such Whole-time Member—

(a) ceases to be a citizen of India; or

(b) is adjudged an insolvent; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is convicted of any offence involving moral turpitude; or

(e) is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind:

Provided that the President may, by order, remove any Part-time Member from his office if he is adjudged an insolvent or is convicted of any offence involving moral turpitude or where he is, in the opinion of the President, unfit to continue in office by reason of infirmity of body or mind.”;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If the Chairman or any Whole-time Member, except any *ex officio* Member, the Nominated Member or any elected Member, is, or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Corporation or the Government of India or the Government of a State or, participates in any way in the profit thereof, or in any benefit or emolument arising therefrom than as a member, and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.”.

7. *Amendment of section 9.*— In section 9 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Subject to such control, restrictions and conditions as may be prescribed, the Corporation may appoint, after consultation with the Recruitment Board, the Director-General (Akashvani), the Director-General (Doordarshan) and such other officers and employees as may be necessary.”

8. *Amendment of section 10.*— In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Corporation shall, as soon as may be, after the appointed day and in such manner and subject to such conditions and restrictions as may be prescribed, establish for the purposes of section 9, one or more Recruitment Boards consisting wholly of persons other than the Members, officers and other employees of the Corporation:

Provided that for the purposes of appointment to the posts carrying scales of pay which are not less than that of a Joint Secretary to the Central Government, the Recruitment Board shall consist of the Chairman, other Members, the *ex officio* Members, the Nominated Member and the elected Members.”.

9. *Amendment of section 11.*— In section 11 of the principal Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The provisions of sub-section (1) shall also apply to the members of the Indian Information Service, the Central Secretariat Service or any other service or to persons borne on cadres outside Akashvani and Doordarshan who have been working in Akashvani or Doordarshan immediately before the appointed day:

Provided that where any such members intimates, within the time specified in sub-section (1), his intention of not becoming an employee of the Corporation but to continue on deputation, he may be allowed to continue on deputation in accordance with such terms and conditions as may be prescribed.”;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Every officer or other employee transferred by an order made under sub-section (1) shall, within six months from the date of transfer, exercise his option, in writing, to be governed—

(a) by the scale of pay applicable to the post held by him in the Akashvani or Doordarshan immediately before the date of transfer or by the scale applicable to the post under the Corporation to which he is transferred;

(b) by the leave, provident fund, retirement or other terminal benefits admissible to employees of the Central Government in accordance with the rules or orders of the Central Government, as amended from time to time, or the leave, provident fund or other terminal benefits admissible to the employees of the Corporation under the regulations;

and such option once exercised under this Act shall be final:

Provided that the option exercised under clause (a) by an officer or other employee shall be applicable only in respect of the post under the Corporation to which such officer or other employee is transferred and on appointment to a higher post under the Corporation he shall be eligible only for the scale of pay applicable to such higher post:

Provided further that if immediately before the date of his transfer any such officer or other employee is officiating in a higher post under the Government either in a leave vacancy or any other vacancy of a specified duration, his pay on transfer shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Government to which he would have reverted or to the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt:

Provided also that when an officer or other employee serving in the Union Ministry of Information and Broadcasting or in any of its attached or subordinate offices is promoted to officiate in a higher post in the Ministry or office subsequent to the transfer to the Corporation of any other officer or employee senior to him in that Ministry or office before such transfer, the officer or other employee who is promoted to officiate in such higher post shall, on transfer to the Corporation, be entitled only to the scale of pay applicable to the post he would have held but for such promotion or the scale of pay applicable to the post under the Corporation to which he is transferred, whichever he may opt.”.

10. *Amendment of section 12.*—In section 12 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Subject to the provisions of this Act, it shall be the primary duty of the Corporation to organise and conduct

public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television.

Explanation.— For the removal of doubts, it is hereby declared that the provisions of this section shall be in addition to, and not in derogation of, the provisions of the Indian Telegraph Act, 1885.”; 13 of 1885.

(b) in sub-section (2), for clause (n), the following clause shall be substituted, namely:—

“(n) providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;”;

(c) in sub-section (3), for clause (c), the following clause shall be substituted, namely:—

“(c) to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest, for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services;”;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) For the purposes of ensuring that adequate time is made available for the promotion of the objectives set out in this section, the Central Government shall have the power to determine the maximum limit of broadcast time in respect of the advertisement.”;

(e) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) The Corporation shall have power to determine and levy fees and other service charges for or in respect of the advertisements and such programmes as may be specified by regulations:

Provided that the fees and other service charges levied and collected under this sub-section shall not exceed such limits as may be determined by the Central Government, from time to time.”.

11. *Insertion of new sections 13 to 15.*—After section 12 of the principal Act, the following sections shall be inserted, namely:—

13. *Parliamentary Committee.*— (1) There shall be constituted a Committee consisting of twenty-two Members of Parliament, of whom fifteen from the House of the People to be elected by the Members thereof and seven from the Council of States to be elected by the Members thereof in accordance with the system of proportional representation by means of the single transferable vote, to oversee that the Corporation discharges its functions in accordance with the provisions of this Act and, in particular, the objectives set out in section 12 and submit a report thereon to Parliament.

(2) The Committee shall function in accordance with such rules as may be made by the Speaker of the House of the People.

14. *Establishment of Broadcasting Council, term of office and removal, etc., of members thereof.*— (1) There shall be established, by notification, as soon as may be after the appointed day, a Council, to be known as the Broadcasting Council, to receive and consider complaints referred to in section 15 and to advise the Corporation in the discharge of its functions in accordance with the objectives set out in section 12.

(2) The Broadcasting Council shall consist of—

(i) a President and ten other members to be appointed by the President of India from amongst persons of eminence in public life;

(ii) four Members of Parliament, of whom two from the House of the People to be nominated by the Speaker thereof and two from the Council of States to be nominated by the Chairman thereof.

(3) The President of the Broadcasting Council shall be a whole-time member and every other member shall be a part-time member and the President or the part-time member shall hold office as such for a term of three years from the date on which he enters upon his office.

(4) The Broadcasting Council may constitute such number of Regional Councils as it may deem necessary to aid and assist the Council in the discharge of its functions.

(5) The President of the Broadcasting Council shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension (if any), provident fund and other matters as may be prescribed:

Provided that the salary and allowances and the conditions of service shall not be varied to the disadvantage of the President of the Broadcasting Council after his appointment.

(6) The other members of the Broadcasting Council and the members of the Regional Councils constituted under sub-section (4) shall be entitled to such allowances as may be prescribed.

15. *Jurisdiction of, and the procedure to be followed by, Broadcasting Council.*— (1) The Broadcasting Council shall receive and consider complaints from—

(i) any person or group of persons alleging that a certain programme or broadcast or the functioning of the Corporation in specific cases or in general is not in accordance with the objectives for which the Corporation is established;

(ii) any person (other than an officer or employee of the Corporation) claiming himself to have been treated unjustly or unfairly in any manner (including unwarranted invasion of privacy, misrepresentation, distortion or lack of objectivity) in connection with any programme broadcast by the Corporation.

(2) A complaint under sub-section (1) shall be made in such manner and within such period as may be specified by regulations.

(3) The Broadcasting Council shall follow such procedure as it thinks fit for the disposal of complaints received by it.

(4) If the complaint is found to be justified either wholly or in part, the Broadcasting Council shall advise the Executive Member to take appropriate action.

(5) If the Executive Member is unable to accept the recommendation of the Broadcasting Council, he shall place such recommendation before the Board for its decision thereon.

(6) If the Board is also unable to accept the recommendation of the Broadcasting Council, it shall record its reasons therefor and inform the Broadcasting Council accordingly.

(7) Notwithstanding anything contained in sub-sections (5) and (6), where the Broadcasting Council deems it appropriate, it may, for reasons to be recorded in writing, require the Corporation to broadcast its recommendations with respect to a complaint in such manner as the Council may deem fit.”

12. *Amendment of section 16.*— In section 16 of the principal Act, for clause (a), the following clause shall be substituted, namely:—

“(a) all property and assets (including the Non-lapsable Fund) which immediately before that day vested in the Central Government for the purpose of Akashvani or Doordarshan or both shall stand transferred to the Corporation on such terms and conditions as may be determined by the Central Government and the book value of all such property and assets shall be treated as the capital provided by the Central Government to the Corporation;”.

13. *Substitution of new section for section 25.*— For section 25 of the principal Act, the following section shall be substituted, namely:—

“25. *Report to Parliament in certain matters and recommendations as to action against the Board.*— (1) Where the Board persistently makes default in complying with any directions issued under section 23 or fails to supply the information required under section 24, the Central Government may prepare a report thereof and lay it before each House of Parliament for any recommendation thereof as to any action (including supersession of the Board) which may be taken against the Board.

(2) On the recommendation of Parliament, the President may by notification supersede the Board for such period not exceeding six months, as may be specified in the notification:

Provided that before issuing the notification under this sub-section, the President shall give a reasonable opportunity to the Board to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(3) Upon the publication of the notification under sub-section (2),—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall, until the Board is reconstituted under this Act, be exercised and discharged by such person or persons as the President may direct.

(4) On the expiration of the period of supersession specified in the notification issued under sub-section (2), the President may reconstitute the Board by fresh appointments and in such a case any person who had vacated his office under clause (a) of sub-section (3) shall not be disqualified for appointment:

Provided that the President may, at any time before the expiration of the period of supersession, take action under this sub-section.

(5) The Central Government shall cause the notification issued under sub-section (2) and a full report of the action taken under this section to be laid before each House of Parliament.”.

14. *Insertion of new section 26.*— After section 25 of the principal Act, the following section shall be inserted, namely:—

“26. *Office of member not to disqualify a Member of Parliament.*— It is hereby declared that the office of the member of the Broadcasting Council or of the Committee constituted under section 13 shall not disqualify its holder for being chosen as, or for being, a Member of either House of Parliament.”.

15. *Substitution of new sections for sections 27 and 28.*— For sections 27 and 28 of the principal Act, the following sections shall be substituted, namely:—

“27. *Chairman, Members, etc., to be public servants.*—The Chairman and every other Member, officer or other employee of the Corporation and every member of a Committee thereof, the President and every member of the Broadcasting Council or every member of a Regional Council or a Recruitment Board shall be deemed to be a public servant within the meaning of section 21 of the Indian 45 of 1860. Penal Code.

28. *Protection of action taken in good faith.*— No suit or other legal proceeding shall lie against the Corporation, the Chairman or any Member or officer or other employee thereof or the President or a member of the Broadcasting Council or a member of a Regional Council or a Recruitment Board for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.”.

16. *Substitution of new section for section 31.*— For section 31 of the principal Act, the following section shall be substituted, namely:—

“31. *Annual report.*— (1) The Corporation shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities (including the recommendations and suggestions made by the Broadcasting Council and the action taken thereon) during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

(2) The Broadcasting Council shall prepare once in every calendar year, in such form and within such time as may be prescribed, an annual report giving a full account of its activities during the previous year and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”.

17. *Amendment of section 32.*— In section 32 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the Whole-time Members under sub-section (9) of section 6;

(b) the allowances payable to the Chairman and Part-time Members under sub-section (10) of section 6;

(c) the control, restrictions and conditions subject to which the Corporation may appoint officers and other employees under sub-section (1) of section 9;

(d) the manner in which and the conditions and restrictions subject to which a Recruitment Board may be established under sub-section (1) of section 10;

(e) the qualifications and other conditions of service of the members of a Recruitment Board and their period of office under sub-section (2) of section 10;

(f) the terms and conditions in accordance with which the deputation may be regulated under sub-section (2) of section 11;

(g) the salary and allowances and conditions of service in respect of leave, pension (if any), provident fund and other matters in relation to the President of the Broadcasting Council under sub-section (5) of section 14;

(h) the allowances payable to other members of the Broadcasting Council and the members of the Regional Councils under sub-section (6) of section 14;

(i) the manner in which the Corporation may invest its moneys under section 19;

(j) the form and manner in which the annual statement of accounts shall be prepared under sub-section (1) of section 21;

(k) the form in which and the time within which the Corporation and the Broadcasting Council shall prepare their annual report under section 31;

(l) any other matter which is required to be, or may be, prescribed.”.

18. *Amendment of section 33.*— In section 33 of the principal Act, in sub-section (2),—

(i) after clause (g), the following clause shall be inserted, namely:—

“(h) the manner in which and the period within which complaints may be made under sub-section (2) of section 15;”;

(ii) clause (h) shall be re-lettered as clause (i).

19. *Repeal and saving.*— (1) The Prasar Bharati Broadcasting Corporation of India) Amendment Ord. 16 of Ordinance; 1998 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Ordinance.

K. R. NARAYANAN,

President.

RAGHBIR SINGH,

Secy. to the Govt. of India.

Notification

10-4-99/LA-IV

The Patents (Amendment) Ordinance, 1999 (Ordinance No. 3 of 1999) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II, Section I, dated 8th January, 1999, is hereby published for general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 5th February, 1999.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 8th January, 1999/Pausa 18, 1920 (Saka)

THE PATENTS (AMENDMENT) ORDINANCE, 1999

(No. 3 of 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Patents Act, 1970.

Whereas a Bill further to amend the Patents Act, 1970 has been passed by the Council of States and is pending in the House of the People;

And Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*— (1) This Ordinance may be called the Patents (Amendment) Ordinance, 1999.

(2) It shall be deemed to have come into force on the 1st day of January, 1995.

2. *Amendment of section 5.*— Section 5 of the Patents Act, 1970 (hereinafter referred to as the 39 of 1970. principal Act) shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use or capable of being used, as medicine or drug, except the medicine or drug specified under sub-clause (v) of clause (1) of sub-section (1) of section 2, may be made and shall be dealt: without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA.”.

3. *Insertion of new Chapter IVA.*— After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER IVA

Exclusive Marketing Rights

24A. *Application for grant of exclusive rights.*— (1) Notwithstanding anything contained in sub-section (1) of section 12, the Controller shall not, under that sub-section, refer an application in respect of a claim for a patent covered under sub-section (2) of section 5 to an examiner for making a report till the 31st day of December, 2004 and shall, where an application for grant of exclusive right to sell or distribute the article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer the application for patent, to an examiner for making a report to him as to whether the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4.

(2) Where the Controller, on receipt of a report under sub-section (1) and after such other investigation as he may deem necessary, is satisfied that the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4, he shall reject the application for exclusive right to sell or distribute the article or substance.

(3) In a case where an application for exclusive right to sell or distribute an article or a substance is not rejected by the Controller on receipt of a report under sub-section (1) and after such other investigation, if any, made by him, he may proceed to grant exclusive right to sell or distribute the article or substance in the manner provided in section 24B.

Explanation.— It is hereby clarified that for the purposes of this section, the exclusive right to sell or distribute any article or substance under this section shall not include an article or substance based on the system of Indian medicine as defined in clause (e) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 1970 and such article or substance is already in the public domain. 48 of 1970.

24B. *Grant of exclusive rights.*— (1) Where a claim for patent covered under sub-section (2) of section 5 has been made and the applicant has,—

(a) where an invention has been made whether in India or in a country other than India and before filing such a claim, filed an application for the same invention claiming identical article or substance in a convention country on or after the 1st day of January, 1995 and the patent and the approval to sell or distribute the article or substance on the basis of appropriate tests conducted on or after the 1st day of January, 1995, in that country has been granted on or after the date of making a claim for patent covered under sub-section (2) of section 5; or

(b) where an invention has been made in India and before filing such a claim, made a claim for patent on or after the 1st day of January, 1995 for method or process of manufacture for that invention relating to identical article or substance and has been granted in India the patent therefor on or after the date of making a claim for patent covered under sub-section (2) of section 5,

and has been received the approval to sell or distribute the article or substance from the authority specified in this behalf by the Central Government, then, he shall have the exclusive right by himself, his agents or licensees to sell or distribute in India the article or the substance on and from the date of approval granted by the Controller in this behalf till a period of five years or till the date of grant of patent or the date of rejection of application for the grant of patent, whichever is earlier.

(2) Where, the specifications of an invention relatable to an article or a substance covered under sub-section (2) of section 5 have been recorded in a document or the invention has been tried or used, or, the article or the substance has been sold, by a person, before a claim for a patent of that invention is made in India or in a convention country, then, the sale or distribution of the article or substance by such person, after the claim referred to above is made, shall not be deemed to be an infringement of exclusive right to sell or distribute under sub-section (1):

Provided that nothing in this sub-section shall apply in a case where a person makes or uses an article or a substance with a view to sell or distribute the same, the details of invention relatable thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

24C. *Compulsory licences.*— The provisions in relation to compulsory licences in Chapter XVI shall, subject to the necessary modifications, apply in relation to an exclusive right to sell or distribute under section 24B as they apply to, and in relation to, a right under a patent to sell or distribute and for that purpose the following modifications shall be deemed to have been made to the provisions of that Chapter and all their grammatical variations and cognate expressions shall be construed accordingly, namely:—

(a) throughout Chapter XVI,—

- (i) working of the invention shall be deemed to be selling or distributing of the article or substance;
- (ii) references to "patents" shall be deemed to be references to "right to sell or distribute";
- (iii) references to "patented article" shall be deemed to be references to "an article for which exclusive right to sell or distribute has been granted";

(b) three years from the date of sealing of a patent in section 84 shall be deemed to be two years from the date of approval by the Controller for exclusive right to sell or distribute under section 24B;

(c) the time which has elapsed since the sealing of a patent under section 85 shall be deemed to be the time which has elapsed since the approval by the Controller for exclusive right to sell or distribute under section 24B;

(d) clauses (d) and (e) of section 90 shall be omitted.

24D. *Special provision for selling or distribution.*— (1) Without prejudice to the provisions of any other law for the time being in force, where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (1) of section 24B, the Central Government is satisfied that it is necessary or expedient in public interest to sell or distribute the article or substance by a person other than a person to whom exclusive right has been granted under sub-section (1) of section 24, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance.

(2) The Central Government may, by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest and for reasons to be stated, that the said article or substance shall be sold at a price determined by an authority specified by it in this behalf.

24E. *Suits relating to infringements.*— All suits relating to infringement of a right under section 24B shall be dealt with in the same manner as if they are suits concerning infringement of patents under Chapter XVIII.

24F. *Central Government and its officers not to be liable.*— The examination and investigations required under this Chapter shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be

incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon."

4. *Omission of section 39.*— Section 39 of the principal Act shall be omitted.

5. *Amendment of section 40.*— In section 40 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

6. *Amendment of section 64.*— In section 64 of the principal Act, in sub-section (1), in clause (n), the words and figures "or made or caused to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

7. *Amendment of section 118.*— In section 118 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent in contravention of section 39" shall be omitted.

8. *Insertion of new section 157A.*— After section 157 of the principal Act, the following section shall be inserted namely:—

'157A. *Protection of security of India.*— Notwithstanding anything contained in this Act, the Central Government shall—

(a) not disclose any information relating to any patentable invention or any application relating to the grant of patent under this Act, which it considers prejudicial to the interest of security of India;

(b) take action including the revocation of any patent which it considers necessary in the interest of security of India:

Provided that the Central Government shall, before taking any action under this clause, issue a notification in the Official Gazette declaring its intention to take such action.

Explanation.— For the purposes of this section, the expression "security of India" means any action necessary for the security of India which—

(i) relates to fissionable materials or the materials from which they are derived; or

(ii) relates to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(iii) is taken in time of war or other emergency in matter of international relations.'

9. *Savings.*— (1) Anything done or any action taken under the principal Act as amended by the Patents (Amendment) Ordinance, 1994, which ceased

to operate, shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Ordinance.

(2) All applications made in respect of claims for patent of invention specified under sub-section (2) of section 5 of the principal Act, from the date of cessation of the Patents (Amendment) Ordinance, 1994 till the date on which this Ordinance is promulgated by the President (both days inclusive) shall be deemed to have been validly made as if the provisions of the principal Act, as amended by this Ordinance, had been in force at all material times.

Ord. 13 of
1994.

K. R. NARAYANAN,

President.

RAGHBIR SINGH,

Secy. to the Govt. of India.

Notification

10-4-99/LA-VI

The Salaries, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 1999 (Ordinance No. 6 of 1999) which has been promulgated by the President of India and published in the Gazette of India, Extraordinary, Part II Section I dated 18th January, 1999 is hereby published for general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 9th February, 1999.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 18th January, 1999/Pausa 28, 1920 (Saka)

THE SALARIES, ALLOWANCES AND PENSION OF MEMBERS OF PARLIAMENT (AMENDMENT) ORDINANCE, 1999

(No. 6 of 1999)

Promulgated by the President in the Forty-ninth Year of the Republic of India.

An Ordinance further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action:

Now. Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*— (1) This Ordinance may be called the Salaries, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 1999.

(2) It shall come into force at once.

2. *Insertion of new section 8AA.*— After section 8A of the Salary, Allowances and Pension of Members of Parliament Act, 1954, the following section 30 of 1954, shall be inserted, namely:—

“8AA. *Travel facility to ex-members.*— With effect from the commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 1999, every person who is not a sitting member but has served for any period as a member of either House of Parliament shall be entitled along with a companion to travel in any train by any railway in India in air-conditioned two-tier class without payment of any charges on the basis of an authorisation issued for this purpose by the Secretariat of either House of Parliament, as the case may be.”.

K. R. NARAYANAN,

President.

RAGHBIR SINGH,

Secy. to the Govt. of India.

Notification

10-4-99/LA-XV

The Customs (Amendment) Act, 1998 (Central Act 8 of 1999) which has been passed by the Parliament and assented to by the President of India on 8th January, 1999 and published in the Gazette of India, Extraordinary, Part II, Section I, dated 8th January, 1999 is hereby published for general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 12th March, 1999.

THE CUSTOMS (AMENDMENT) ACT, 1998

AN

ACT

further to amend the Customs Act, 1962..

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. *Short title.*— This Act may be called the Customs (Amendment) Act, 1998.

2. *Amendment of section 75A of Act 52 of 1962.*— In section 75A of the Customs Act, 1962,—

(a) in sub-section (1), for the words “period of three months” at both the places where they occur, the words “period of two months” shall be substituted;

(b) in sub-section (2), for the words “three months” at both the places where they occur, the words “two months” shall be substituted.